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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

KIMBERLY PETROSKI,) Case No. CV 11-02569-MLG
)
Plaintiff,) MEMORANDUM OPINION AND ORDER
)
v.)
)
MICHAEL J. ASTRUE,)
) Commissioner of the Social)
) Security Administration,)
)
Defendant.)
_____)

Plaintiff Kimberly Petroski seeks judicial review of the Commissioner's denial of her application for disability insurance benefits ("DIB") and supplemental security income benefits. For the reasons discussed below, the Commissioner's decision is reversed, and this action is remanded for further proceedings.

I. BACKGROUND

Plaintiff was born on August 17, 1961. (AR at 65). She has relevant work experience as an account manager and sales manager at a furniture company. (AR at 103). She filed an application for DIB as well as an application for supplemental security income benefits on August 10, 2007, alleging disability beginning July 24, 2006,

1 due to cat scratch disease and flu-like symptoms. (AR at 59, 67).
2 The Social Security Administration denied Plaintiff's application
3 initially on December 5, 2007. (AR at 59, 67-71).

4 An de novo hearing was held before Administrative Law Judge
5 Dale A. Garwal (the "ALJ") on July 15, 2009. (AR at 59). Plaintiff,
6 who was represented by counsel, testified at the hearing. (AR at
7 59). The ALJ issued a decision on September 29, 2009, denying
8 Plaintiff's application. (AR at 59-66). The ALJ found that although
9 Plaintiff suffers from a history of chronic fatigue syndrome
10 ("CFS") and is unable to perform her past relevant work, she has
11 the residual functional capacity ("RFC") to perform a full range of
12 sedentary work and therefore is able to perform jobs that exist in
13 significant numbers in the national economy. (AR at 61-66). The
14 Appeals Council denied review on February 14, 2011 (AR at 3-5).

15 Plaintiff commenced this action for judicial review on March
16 18, 2011. The parties filed a joint statement of disputed issues
17 ("Joint Stipulation") on November 21, 2011. Plaintiff contends the
18 ALJ failed to give appropriate weight to the opinion of her
19 treating physician, improperly evaluated her credibility, and erred
20 in finding that she can perform other work. (Joint Stipulation at
21 2, 16). Plaintiff seeks remand for payment of benefits or, in the
22 alternative, remand for further administrative proceedings (Joint
23 Stipulation at 18-19). The Defendant requests that the ALJ's
24 decision be affirmed or, if the Court finds that the ALJ committed
25 reversible error, that the Court remand for further administrative
26 proceedings. (Joint Stipulation at 19).

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1 **II. STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), a district court may review the
3 Commissioner's decision to deny benefits. The Commissioner's or
4 ALJ's decision must be upheld unless "the ALJ's findings are based
5 on legal error or are not supported by substantial evidence in the
6 record as a whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
7 1990); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).
8 Substantial evidence means such evidence as a reasonable person
9 might accept as adequate to support a conclusion. *Richardson v.*
10 *Perales*, 402 U.S. 389, 401 (1971); *Widmark v. Barnhart*, 454 F.3d
11 1063, 1066 (9th Cir. 2006). It is more than a scintilla, but less
12 than a preponderance. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880,
13 882 (9th Cir. 2006). To determine whether substantial evidence
14 supports a finding, the reviewing court "must review the
15 administrative record as a whole, weighing both the evidence that
16 supports and the evidence that detracts from the Commissioner's
17 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996).
18 "If the evidence can support either affirming or reversing the
19 ALJ's conclusion," the reviewing court "may not substitute its
20 judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

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22 **III. DISCUSSION**

23 **A. The ALJ Failed to Give Appropriate Weight to the Treating**
24 **Physician's Opinion**

25 Plaintiff contends that the ALJ improperly rejected the work-
26 related limitations assessed by her treating physician in finding
27 that Plaintiff could perform a full range of sedentary work.

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1 The Commissioner is directed to weigh medical opinions based
2 in part on their source, specifically, whether proffered by
3 treating, examining, or non-examining professionals. *Lester v.*
4 *Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). Generally, more weight
5 is given to the opinion of a treating professional, who has a
6 greater opportunity to know and observe the patient as an
7 individual, than the opinion of a non-treating professional. See
8 *id.*; *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996).

9 The Commissioner must also consider whether a medical opinion
10 is supported by clinical findings and is contradicted by other
11 medical evidence of record. The Commissioner may reject the
12 uncontradicted opinion of a treating or examining medical
13 professional only for "clear and convincing" reasons supported by
14 substantial evidence in the record. See *Lester*, 81 F.3d at 831. A
15 contradicted opinion of a treating or examining professional may be
16 rejected only for "specific and legitimate" reasons supported by
17 substantial evidence. *Lester*, 81 F.3d at 830. If a treating
18 professional's opinion is contradicted by an examining
19 professional's opinion, which is supported by different independent
20 clinical findings, the Commissioner may resolve the conflict by
21 relying on the latter. See *Andrews v. Shalala*, 53 F.3d 1035, 1041
22 (9th Cir. 1995); see also *Orn v. Astrue*, 495 F.3d 625, 632 (9th
23 Cir. 2007) (ALJ may reject opinion of treating physician in favor
24 of examining physician whose opinion rests of independent clinical
25 findings).

26 The record indicates that Plaintiff was seen by her treating
27 physician, Gary J. Lawson, M.D., multiple times for various reasons
28 between July 2006 and June 2008. (AR at 216-42). Dr. Lawson

1 diagnosed Plaintiff with CFS, and the treating records contain
2 numerous notations of "chronic fatigue" and other symptoms. On July
3 14, 2009, Dr. Lawson completed a questionnaire stating that
4 Plaintiff has CFS, is incapable of tolerating even a low stress
5 job, can only sit or stand for thirty minutes continuously, and
6 would likely be absent from work more than four times a month as a
7 result of the impairments or treatment. (AR at 272).

8 The ALJ rejected Dr. Lawson's opinion as to Plaintiff's RFC,
9 but failed to state adequate reasons for doing so. (AR at 63-64).
10 First, the ALJ took issue with the fact that the Plaintiff's
11 symptoms were subjective, noting that "[a]pparently based purely on
12 the claimant's subjective symptoms Dr. Lawson diagnosed chronic
13 fatigue syndrome," and that "Dr. Lawson appears to have taken
14 claimant's statements at face value." (AR at 63, 65). It is true
15 that in general, an "ALJ need not accept the opinion of any
16 physician, including a treating physician, if that opinion is
17 brief, conclusory, and inadequately supported by clinical
18 findings." See *Batson v. Commissioner of Social Security*
19 *Administration*, 359 F.3d 1190, 1195 (9th Cir. 2004) (noting that
20 "an ALJ may discredit treating physicians' opinions that are
21 conclusory, brief, and unsupported by the record as a whole, ... or
22 by objective medical findings"); see also *Tonapetyan v. Halter*, 242
23 F.3d 1144, 1149 (9th Cir. 2001). However, rejecting Dr. Lawson's
24 opinion on the premise that it was based on plaintiff's subjective
25 complaints is improper in the context of a CFS case. *Reddick v.*
26 *Chater*, 157 F.3d 715, 725-26 (9th Cir. 1998). As the Ninth Circuit
27 explained, "[c]hronic fatigue is defined as 'self-reported
28 persistent or relapsing fatigue lasting six or more consecutive

1 months.'" Id. at 726 (emphasis in original) (quoting Centers for
2 Disease Control, *The Chronic Fatigue Syndrome: A Comprehensive*
3 *Approach to its Definition and Study*, 121 *Annals of Internal*
4 *Medicine* 954 (1994)). "Although CFS is accompanied by symptoms such
5 as body aches, low-grade fevers, memory problems, headaches, and
6 extended flu-like symptoms ... the presence of fatigue is
7 necessarily self-reported. The final diagnosis is made 'by
8 exclusion,' or ruling out other possible illnesses." *Reddick*, 157
9 F.3d at 726.

10 Of course "[a]n ALJ may reject a treating physician's opinion
11 if it is based to a large extent on a claimant's self-reports that
12 have been properly discounted as incredible." *Tommasetti v. Astrue*,
13 533 F.3d 1035, 1041 (9th Cir. 2008) (internal citations omitted)
14 (emphasis added). However, as will be discussed later in this
15 opinion, the ALJ improperly discounted plaintiff's subjective
16 complaints regarding the nature and extent of her functional
17 limitations. Given the difficult nature of diagnosing CFS, to the
18 extent that the ALJ's rejection of Dr. Lawson's opinion was based
19 on a lack of objective medical evidence, that rejection was
20 improper. See *Reddick*, 157 F.3d at 726; see also *Cook v. Liberty*
21 *Life Assur. Co. of Boston*, 320 F.3d 11, 21 (1st Cir. 2003)
22 (requiring objective documentation of CFS is unreasonable).

23 In rejecting Dr. Lawson's opinion, the ALJ also relied on the
24 opinion of Lakshmi Sadasivan, M.D., an internal medicine consultant
25 who evaluated Plaintiff. (AR at 63). Dr. Sadasivan reviewed only
26 two items in Plaintiff's record: the infectious disease
27 consultation report from October 28, 2005, and a report from her
28 optometrist dated September 14, 2007. (AR at 208). She examined

1 Plaintiff on November 21, 2007 and did not find any significant
2 physical or neurological problems (AR at 209-12). Based on her
3 evaluation, Dr. Sadasivan concluded that Plaintiff would be able to
4 lift or carry 50 pounds occasionally and 25 pounds frequently,
5 could stand, walk, or sit for 6 hours in an eight-hour day, and
6 would have no postural, manipulative, visual, communicative, or
7 environmental limitations. (AR at 212).

8 The opinion of Dr. Sadasivan does not constitute a proper
9 basis for rejecting Dr. Lawson's treating source opinion. It
10 appears that Dr. Sadasivan was not apprised of Plaintiff's
11 diagnosis of CFS or given access to any of the medical records
12 documenting it. As noted, there are no objective signs or tests to
13 confirm CFS, and thus it is unremarkable that Dr. Sadasivan's tests
14 did not reveal significant abnormalities. Finally, given that the
15 ALJ found that Plaintiff did suffer from CFS and disputed only the
16 severity of its impact, it was not logical for him to rely on a
17 medical evaluation that contained no mention of CFS to assess its
18 severity. Thus, the ALJ's decision to credit the examining
19 physician's assessment over the treating physician's was not
20 supported by substantial evidence.

21 The ALJ also rejected Dr. Lawson's opinion because he found
22 that Dr. Lawson had alleged that Plaintiff suffered from certain
23 symptoms that were not consistently indicated in his treating
24 records. (AR at 63). These symptoms included short-term memory or
25 concentration impairment, sore throat, tender lymph nodes, muscle
26 pain, joint pain, headaches, unrefreshing sleep, and post-

1 exertional malaise.¹ (AR at 63, 271). Nearly all of the treating
2 records, however, contain a notation of chronic fatigue, which
3 logically encompasses the symptoms underlying that diagnosis. (AR
4 at 218-29). Additionally, many of the records mention equivalent
5 symptoms such as "body aches," and given that the referenced
6 symptoms were checked off on a standard form questionnaire, it is
7 unsurprising that the terms used in the treating records differ
8 from the language on the questionnaire. Moreover, many of the
9 notations contained in the treating records are illegible. Thus, to
10 the extent the ALJ questioned whether the relevant symptoms had
11 been consistently observed and documented by Dr. Lawson, he should
12 have inquired further. *See, e.g., Smolen*, 80 F.3d at 1288.

13 Next, the ALJ found Dr. Lawson's contention that emotional
14 factors did not contribute to Plaintiff's symptoms of CFS to be
15 contradicted by the records stating that the Plaintiff had
16 depression and anxiety. (AR at 63-64). Yet these positions are not
17 inconsistent, as it is entirely possible that while Plaintiff did
18 suffer from depression and anxiety, these conditions did not
19 contribute to Plaintiff's CFS symptoms. To the extent the ALJ was
20 concerned that there could be a contradiction or that the symptoms
21 had a psychological overlay, he should have contacted Dr. Lawson to
22 inquire further as set forth in 20 C.F.R. 404.1512(e)(1).

23 Finally, the ALJ observed "that all of the reports for state
24 unemployment found that the claimant was capable of performing her
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27 ¹ These symptoms appear on the CFS Residual Functional
28 Capacity Questionnaire, completed by Dr. Lawson on July 14, 2009,
and are taken from Social Security Ruling 99-2p, which identifies
the symptoms necessary for a diagnosis of CFS.

1 regular or customary work within one month." (AR at 64). However,
2 this mischaracterizes the eight reports, which span the time period
3 from December 2005 to April 2007. The reports contain only an
4 *estimated* date for when the Plaintiff would be able to perform her
5 customary work. While five of the reports have an estimated date of
6 within one month, two of the reports have lengthier estimates. (AR
7 at 235-41). Looking at the reports as a whole, it is clear that
8 Plaintiff did not in fact improve within the estimated periods, but
9 instead was consistently found to be unable to perform her
10 customary work for the immediate future.

11 Accordingly, none of the ALJ's stated reasons for rejecting
12 Dr. Lawson's opinion are supported by substantial evidence in the
13 record.

14 **B. The ALJ Improperly Evaluated Plaintiff's Credibility**

15 Plaintiff contends that the ALJ failed to properly evaluate
16 her credibility in determining that she is capable of performing at
17 least a full range of sedentary work. At the hearing, Plaintiff
18 testified that she suffers from CFS, and that her symptoms began
19 when she was scratched by a cat. (AR at 62). She said that she is
20 constantly tired and sleeps 16 to 18 hours per day. She also
21 experiences shaking, fevers, body aches, diarrhea, headaches,
22 difficulty concentrating, and memory lapse. (AR at 62). She feels
23 that on a bad day she can stand for about five minutes, sit for
24 about 15 minutes, and lift no more than a couple of pounds, and
25 that on a good day she could lift about 15 pounds. (AR at 62). Her
26 symptoms vary and she occasionally has several good days in a
27 month. She stated that despite her fatigue, she is able to perform
28 at least occasional light meal preparation and can take care of her

1 pets, do light housework, drive a car, shop, take care of personal
2 finances, and generally care for herself. (AR at 65).

3 To determine whether a claimant's testimony about subjective
4 pain or symptoms is credible, an ALJ must engage in a two-step
5 analysis. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)
6 (citing *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir.
7 2007)). First, the ALJ must determine whether the claimant has
8 presented objective medical evidence of an underlying impairment
9 which could reasonably be expected to produce the alleged pain or
10 other symptoms. *Lingenfelter*, 504 F.3d at 1036. "[O]nce the
11 claimant produces objective medical evidence of an underlying
12 impairment, an adjudicator may not reject a claimant's subjective
13 complaints based solely on a lack of objective medical evidence to
14 fully corroborate the alleged severity of pain." *Bunnell v.*
15 *Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). To the
16 extent that an individual's claims of functional limitations and
17 restrictions due to symptoms are reasonably consistent with the
18 objective medical evidence and other evidence in the case, the
19 claimant's allegations will be credited. SSR 96-7p, 1996 WL 374186
20 at *2 (explaining 20 C.F.R. §§ 404.1529(c)(4), 416.929(c)(4)).²

21 Unless there is affirmative evidence showing that the claimant
22 is malingering, the ALJ must provide specific, clear and convincing
23 reasons for discrediting a claimant's complaints. *Robbins*, 466 F.3d
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25 ² "The Secretary issues Social Security Rulings to clarify the
26 Secretary's regulations and policy Although SSRs are not
27 published in the federal register and do not have the force of law,
28 [the Ninth Circuit] nevertheless give[s] deference to the
Secretary's interpretation of its regulations." *Bunnell*, 947 F.2d
at 346 n.3.

1 at 883. "General findings are insufficient; rather, the ALJ must
2 identify what testimony is not credible and what evidence
3 undermines the claimant's complaints." *Reddick*, 157 F.3d at 722
4 (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996)). The
5 ALJ must consider a claimant's work record, observations of medical
6 providers and third parties with knowledge of claimant's
7 limitations, aggravating factors, functional restrictions caused
8 by symptoms, effects of medication, and the claimant's daily
9 activities. *Smolen v. Chater*, 80 F.3d 1273, 1283-84 & n.8 (9th Cir.
10 1996). The ALJ may also consider an unexplained failure to seek
11 treatment or follow a prescribed course of treatment and employ
12 other ordinary techniques of credibility evaluation. *Id.* (citations
13 omitted).

14 Here, the ALJ concluded that Plaintiff's "medically
15 determinable impairments could reasonably be expected to cause some
16 of the alleged symptoms." (AR at 17). However, the ALJ rejected as
17 not credible Plaintiff's statements "concerning the intensity,
18 persistence and limiting effects of these symptoms" to the extent
19 they are inconsistent with the RFC allowing for a full range of
20 sedentary work. (AR at 64). Because there was no evidence of
21 malingering, the ALJ was required to provide clear and convincing
22 reasons for rejecting this testimony.

23 The ALJ listed multiple reasons for rejecting Plaintiff's
24 testimony. First, the ALJ found that the medical evidence submitted
25 failed to document that Plaintiff has consistently experienced the
26 symptoms generally associated with CFS as specified in Social
27 Security Ruling 99-2p. (AR at 65). As discussed above, however, Dr.
28 Lawson's records appear to document Plaintiff's complaints of

1 constant fatigue and related symptoms. (AR at 218-29).

2 Next, the ALJ stated that Plaintiff's "contention that her
3 chronic fatigue and other symptoms began with a cat scratch was
4 thoroughly discredited by the infectious disease specialist who
5 briefly treated her." (AR at 65). However, this statement
6 mischaracterizes the evidence. In a letter regarding his
7 consultation with Plaintiff dated October 28, 2005, the specialist,
8 Jon F. Willen, M.D., did note that cat-scratch disease was not
9 documented serologically. (AR at 142). Nevertheless, in the same
10 sentence he added the caveat that "there are false negative
11 serologic studies." Additionally, in an assessment of Plaintiff
12 bearing the same date, Dr. Willen noted that he "suspect[ed] an
13 acute viral process; *most likely would be cat-scratch disease.*" (AR
14 at 141) (emphasis added). After a reevaluation dated August 15,
15 2006, Dr. Willen further opined that Plaintiff had a form of CFS,
16 "probably initiated by an infectious agent, most likely viral." (AR
17 at 148).

18 Plaintiff did not need to demonstrate the cause of her
19 disability in order to prevail on her disability claim. Rather, the
20 issue of cause is relevant only to the extent that it bears on her
21 credibility. Given the evidence suggesting Plaintiff had suffered
22 a viral process that was likely cat-scratch disease and that a
23 viral infectious agent initiated her CFS, Plaintiff's contention
24 that a cat scratch caused her CFS does not provide a convincing
25 reason for finding her testimony not credible. She was under no
26 obligation to provide more definitive proof that a cat scratch in
27 fact caused her CFS.

28 The ALJ also noted that while claimant has allergic rhinitis,

1 there is no indication that it currently affects her functioning,
2 and that her contention that she had extremely poor vision was
3 proven to be untrue by her optometrist. (AR at 65). As neither
4 rhinitis nor poor vision form the basis for Plaintiff's disability
5 claim, the ALJ's findings with respect to them are again relevant
6 only as to the issue of her credibility. It does not appear that
7 Plaintiff made any false or inconsistent statements with respect to
8 her rhinitis, and neither the ALJ nor Defendant has pointed out
9 any. Regarding her vision, the letter from her optometrist dated
10 September 14, 2007 indicated that Plaintiff had several
11 complications, including an astigmatism and glasses and contact
12 lenses that were "over-corrected," but that these issues were
13 "correctable." (AR at 195). These findings do not undermine
14 Plaintiff's credibility; rather, they demonstrate that at the time
15 she was seen by an optometrist she was indeed suffering from vision
16 complications. Moreover, there is no evidence that Plaintiff's
17 vision issues were ever resolved.

18 Next, the ALJ discredited Plaintiff's symptom testimony based
19 on her daily activities. A disability claimant's daily activities
20 "may be grounds for an adverse credibility finding if a claimant is
21 able to spend a substantial part of his day engaged in pursuits
22 involving the performance of physical functions that are
23 transferable to a work setting," *Orn v. Astrue*, 495 F.3d 625, 639
24 (9th Cir. 2007) (internal quotation marks omitted). Here, the ALJ
25 found that "[a]lthough the claimant has alleged that she is
26 extremely fatigued she has admitted to being able to perform at
27 least occasional light meal preparation and that she can take care
28 of her pets (including cats), do light housework, drive a car,

1 shop, take care of her own personal finances, and take care of her
2 own self-care activities." (AR at 65). These limited activities,
3 however, are not inconsistent with Plaintiff's testimony regarding
4 her abilities and the fact that she is only awake between six and
5 eight hours a day. Moreover, the record clarifies that the
6 activities are extremely limited in duration and are generally only
7 performed when the Plaintiff "feels up to it," and that she has
8 regular help from her mother for tasks such as feeding the animals.
9 (AR at 118-25). In short, the fact that Plaintiff is not "utterly
10 incapacitated" does not prevent a finding of disability nor render
11 her claim that she suffers from CFS not credible. See *Vertigan v.*
12 *Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) (citing *Fair v. Bowen*,
13 885 F.2d 597, 603 (9th Cir. 1989) (One does not need to be "utterly
14 incapacitated" in order to be disabled).

15 The ALJ further stated that "[a]llthough there appears to be an
16 emotional component to the claimant's chronic fatigue it is notable
17 that she was never referred for any formal mental health care to
18 explore this issue." (AR at 65). As discussed in the prior section,
19 however, it is not clear that emotional factors were a component of
20 Plaintiff's CFS, rather than a separate issue. Additionally, the
21 fact that Plaintiff was not referred for any formal mental health
22 care is not dispositive of whether Plaintiff suffered from mental
23 health issues. See, e.g., *Regennitter v. Comm'r*, 166 F.3d 1294,
24 1299 (9th Cir. 1999) ("it is questionable practice to chastize one
25 with a mental impairment for the exercise of poor judgement in
26 seeking rehabilitation")(internal quotations omitted). The record
27 contains other evidence demonstrating that Plaintiff suffered from
28 mental health issues, including reports from her treating physician

1 noting that she suffered from depression, (AR at 222, 224, 236),
2 and the fact that she was treated with Wellbutrin, an
3 antidepressant (AR at 222, 225-27).

4 Finally, the ALJ found that "[d]espite the claimant's
5 contention that she has to sleep 16 to 18 hours a day she has
6 clearly failed to establish any medically determinable condition
7 which would support this." (AR at 65). Yet the ALJ had already
8 concluded that Plaintiff's CFS was a severe impairment and that
9 "[t]he severity of this condition is established by the objective
10 medical evidence, the opinions of the treating physicians and
11 consultative examiners, and other evidence....". (AR at 61). In
12 light of those conclusions, the ALJ was not entitled to discredit
13 Plaintiff's testimony merely because objective evidence did not
14 corroborate the severity of the symptoms. *Reddick*, 157 F.3d at 722;
15 *Bunnell*, 947 F.2d at 345; *Light v. Soc. Sec. Admin*, 119 F.3d 789
16 (9th Cir. 1997) ("[B]ecause a claimant need not present clinical or
17 diagnostic evidence to support the severity of his pain...a finding
18 that the claimant lacks credibility cannot be premised wholly on a
19 lack of medical support for the severity of his pain.") (internal
20 citation omitted).

21 In sum, the principal reasons upon which the ALJ based his
22 decision to reject Plaintiff's testimony were either legally
23 improper or unsupported by substantial evidence in the record.

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1 **IV. Conclusion**

2 As a general rule, remand is warranted where additional
3 administrative proceedings could remedy defects in the
4 Commissioner's decision. See *Harman v. Apfel*, 211 F.3d 1172, 1179
5 (9th Cir. 2000). In this case, remand is appropriate to properly
6 consider Dr. Lawson's opinion and Plaintiff's testimony, and to
7 fully develop the record.³

8 Accordingly, the decision of the Commissioner is reversed; and
9 this action is remanded for further proceedings consistent with
10 this Memorandum Opinion.

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12 Dated: December 8, 2011

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15 _____
16 Marc L. Goldman
17 United States Magistrate Judge
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21 ³ Because the record is not sufficiently developed to
22 support a determination of disability without further
23 proceedings, the Court will not consider the third issue raised
24 by Plaintiff--whether the ALJ erred in finding the plaintiff can
25 perform other work. See *Bunnell v. Barnhart*, 336 F.3d 1112,
26 1115-16 (9th Cir. 2003) (where there are outstanding issues that
27 must be resolved before a determination of disability can be
28 made, and it is not clear from the record that the ALJ would be
required to find the claimant disabled if all the evidence were
properly evaluated, remand is appropriate). The Court recommends,
however, that the ALJ consider all of Plaintiff's arguments when
determining the merits of her case on remand. Testimony from a
vocational expert may also be necessary in light of the evidence.